REMARKS

Claims 1, 3-10, 12, 14-17, 21-25, and 31-39 are pending in the present application. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 103, Obviousness

The Office Action rejects claims 1, 3-5, 8-9, 12, 14-17, 21-25, and 31-39 under 35 U.S.C. § 103 as being unpatentable over Kauffman et al. (US Patent No. 5,857,203), hereinafter referred to as "*Kauffman*," in view of Averbuch et al. (US Patent No. 5,689,825), hereinafter referred to as "*Averbuch*."

The Office Action rejects claims 6-7, 10, and 16 under 35 U.S.C. § 103 as being unpatentable over *Kauffman* in view of *Averbuch* and further in view of *Pyne* (US Patent No. 5,446,888).

The Final Office Action states, "[a]ll pending claims are rejected as stated in the prior office action." These rejections are respectfully traversed.

In the Response to Office Action filed January 10, 2002, Applicant argued the following points summarized below:

1) *Kauffman* does not teach or suggest, when a download sequence is interrupted, restarting the download sequence with the piece file affected by the interruption, as specifically recited in claim 1.
2) *Averbuch* provides no teaching or suggestion regarding downloading a plurality of piece files and, at best, teaches what to do if data transfer of a single file is interrupted.
3) *Averbuch* actually teaches away from the presently claimed invention since *Averbuch* directs one to downloading blocks with a fixed block size rather than dividing the file into pieces, as in the claimed invention.
4) *Kauffman* does not teach the problem solved by the present invention or its source and *Averbuch* teaches the problem solved by the present invention, but offers a very different solution from the present invention.
5) Even if *Kauffman* and *Averbuch* could be properly combined, the combination would not form the claimed invention.

6) The presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of applicant's disclosure as a model for the needed changes.

7) The Office Action misapplies the concept of "inherency." The Office Action proffers no reasoning as to why, in a combination of *Kauffman* and *Averbuch*, an interrupted download must **necessarily** restart with the affected file or use the profile to continue the download.

8) *Pyne* does not teach including CRC values in a profile.

9) Even if *Kauffman*, *Averbuch*, and *Pyne* could somehow be combined, the combination would not form the invention recited in claims 6-7, 10, and 16.

The remarks in the Response to Office Action mailed January 10, 2002, as summarized above, are herein incorporated by reference.

With respect to argument (5) above, the Final Office Action states:

> Applicant argued that the present invention is "directed towards dividing file into plurality of component files and, when a download sequence is interrupted, restarting the download with the piece affected by the interruption". Applicant further argued that the combination of Kauffman and Averbuch would result in "a method for downloading a file, in which the file is divided into a plurality of piece files ..., when transfer of one of the piece files is interrupted, the number of blocks remaining is used to restart the transfer of the piece file."
>
> The examiner failed to see how this reading of the combination is distinguished from the claimed invention. Clearly, even as argued by Applicant, the combination teaches dividing a file into piece files, restarting download of the piece file that was interrupted, and combining the piece files after downloading to reconstruct the file. There is no rationale in Kauffman or Averbuch to support applicant argument that the combination would result in Kauffman restarting the download by transferring every piece files including the one already downloaded.

Final Office Action, dated May 1, 2002. Applicant respectfully disagrees. Applicant notes that there is no suggestion in *Kauffman* or *Averbuch* to support the combination. Even assuming, *arguendo*, that a person of ordinary skill in the art would combine *Kauffman* and *Averbuch*, neither reference teaches how the two very different approaches may be combined. In response to the statement, "[t]here is no rationale in Kauffman or Averbuch to support applicant argument that the combination would result in Kauffman restarting the download by transferring every piece files including the one already

download," applicant notes that there is no rationale for the combination in the first place. It follows that such a combination could take many forms, assuming someone would be so motivated to force the combination. For example, if one were to somehow combine *Kauffman* and *Averbuch*, perhaps the file would be divided into a plurality of component files of a fixed size and the resulting combination would count the number of component files, rendering the piece map useless. Perhaps a single file would be associated with a file map that would be used to download blocks of a fixed size. There is no suggestion to combine *Kauffman* and *Averbuch* and, thus, there is no teaching as to how the two very different approaches would be combined.

Furthermore, *Kauffman* teaches dividing a large file into smaller component files. *Averbuch* teaches counting blocks of a fixed size, which is the opposite approach to that of *Kauffman*. Since the approaches taken in *Kauffman* and *Averbuch* are actually mutually opposed to one another, neither reference suggest its combination with the other. In addition, there is no reasonable expectation that the combination could be successful. To combine these very different approaches would require undue experimentation, assuming someone would be so motivated to force the combination. Hence, the references, when considered as a whole, would not enable the combination. Therefore, one of ordinary skill in the art would not be motivated to make the proposed combination to reach the presently claimed invention when *Kauffman* and *Averbuch* are considered as a whole. The many possible results of the combination are irrelevant because a person of ordinary skill in the art would not be motivated to make the proposed combination.

With respect to argument (6) above, the Final Office Action states:

> In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Final Office Action, dated May 1, 2002. Applicant respectfully disagrees. The Office

Action introduces absolutely no "knowledge which was within the level of ordinary skill at the time the claimed invention was made" that supports or suggests the combination. The Office Action proposes combining *Kauffman* and *Averbuch* "because it would have improve the efficiency of the downloading." See Office Action, dated October 10, 2001. However, *Kauffman* does not teach or suggest that the efficiency of downloading piece files could be improved by counting fixed-sized blocks, as in *Averbuch*. And *Averbuch* does not teach or suggest that efficiency of downloading a file could be improved by dividing a file into piece files, rather than using fixed-sized blocks. Since *Kauffman* and *Averbuch* offer very different approaches to downloading files and provide no incentive to combine their teachings, the combination can only be made using "knowledge gleaned only from the applicant's disclosure." Therefore, the reconstruction is improper.

With respect to argument (8) above, the Final Office Action states:

> As per the argument concerning the Pyne reference, the argument is not persuasive because Pyne clearly teaches dividing file into "blocks" and providing a reference key (CRC) for each block [see for example Pyne's claim 1 step a)].

Final Office Action, dated May 1, 2002. Applicant respectfully disagrees. A client computing a reference key for a block, as taught in *Pyne*, is not equivalent to CRC codes in identifying information for each component file of a download file in a profile, which is received before initiating a download of the component files. *Pyne* teaches computing key values at the receiving computer and transferring the key values to the source computer. See col. 4, lines 41-51. Thus, *Pyne* provides no teaching or suggestion of including CRC values in a profile. Even if *Kauffman*, *Averbuch*, and *Pyne* could be somehow combined, the combination still does not teach or suggest each and every claim limitation. Therefore, claims 6-7, 10, and 16 cannot be rendered obvious by *Kauffman*, *Averbuch*, and *Pyne*.

Arguments (1)-(4), (7), and (9) are not addressed in the Final Office Action. Applicant believes these arguments are still applicable and illustrate how the present invention differentiates from the prior art. Therefore, the rejections of claims 1, 3-10, 12, 14-17, 21-25, and 31-39 under 35 U.S.C. § 103 are overcome.

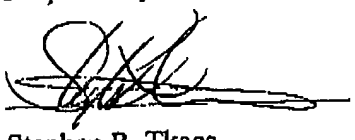
II. Conclusion

It is respectfully urged that the subject application is patentable over *Kauffman*, *Averbuch*, and *Pyne* and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: 20 June 2002

Respectfully submitted,



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